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REMARKS

Claim 2 has been amended by this response. No claims have been added by this response. Accordingly, Claims 2-19 remain presented for examination.

The amendment to Claim 2 is made solely for the purpose of clarification. Claim 2 is neither narrowed by this amendment, nor is the amendment made for patentability purposes.

Discussion of Rejection Under 35 U.S.C. § 102(a)

The Examiner has rejected Claims 2 and 9 under 35 U.S.C. 102(a) as being anticipated by Aeromed (<http://www.aeromed-software.com>, February 5, 1998).

“[I]nvalidity by anticipation requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation.” *Advanced Display Systems, Inc. v. Kent State University*, 212 F.3d 1272 (Fed. Cir. 2000). “There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

An anticipatory printed publication must describe the invention specifically enough to be enabling. *Ex Parte Thompson*, 24 U.S.P.Q.2d 1618, 1619 (Fed. Cir. 1992). Accordingly, even if the claimed invention is disclosed in the printed publication, that disclosure will not suffice as prior art if it is not enabling. *In re Donahue*, 766 F.2d 531, 533 (Fed. Cir. 1985). While not directed specifically at prior art enablement, the eight factors laid out in *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988), for determining whether the specification of a patent enabled a person of ordinary skill in the art to practice the invention without undue experimentation appear applicable by analogy. Of the eight factors enumerated in that case, the most applicable to the present case appears to be the “amount of direction or guidance presented.” *Id.*

While the claims in a U.S. patent reference are presumptively valid, and therefore enabled, under 35 U.S.C. § 282, the Aeromed reference has not successfully undergone examination before the USPTO and is therefore not presumptively enabled under § 282.

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Furthermore, the amount of technical detail recited in Aeromed in no way approaches the level of technical detail required of a patent specification. An examination of the limitations of Claim 2 of the above-referenced application as compared to the disclosure contained in the Aeromed document reveals that at least one claim limitation is not disclosed at all, and that at least one claim limitation is not sufficiently disclosed for Aeromed to constitute an enabling prior art reference.

Applicant respectfully submits that Aeromed does not disclose or suggest a computerized system comprising “a third module comprising instructions for tracking the actual path of the vehicle and determine whether the actual path varies from the calculated path.” Aeromed mentions a system with “real-time flight tracking” and “graphical flight path display” (Aeromed, page 4). Applicant respectfully submits that the portion of the Aeromed document cited by the Examiner does not disclose or suggest instructions for determining whether the actual flight path varies from the calculated path. In addition, a more detailed description of the flight tracking performed by Aeromed, from a portion of the document not cited by the Examiner, states that:

“AeroMap shows you the flight plans of all active units as lines on the map. Position reports are shown as dots. Watch your aircraft as it flies to its destination! You can easily tell if it is off-course.” (Aeromed, page 9)

Applicant respectfully submits that Aeromed discusses a system where the user, looking at position reports and flight plans displayed on a map, can determine whether or not the aircraft is on the calculated flight path. Applicant further submits, however, that this does not disclose, nor does it suggest, a computerized system comprising instructions for determining whether the actual flight path varies from the calculated flight path, as required by the third module of Claim 2. If any determination is made, it is a non-quantitative opinion made by the user viewing a display, not by the computerized system. Applicant respectfully submits that, as Aeromed does not disclose or suggest a computerized system comprising instructions for determining whether the actual flight path varies from the calculated flight path, it neither anticipates nor suggests the claimed invention.

Applicant also respectfully submits that the cited portion of the Aeromed software does not contain enabling disclosure of the “first module comprising instructions for dispatching an aircraft,” because of the lack of direction and guidance provided. The section within the cited portion of Aeromed relevant to Claim 2 is as follows:

“The AMS (AeroMed Software) *Dispatch Module* can be used with the *Flight Management Module* or as a stand-alone system. It is an integrated real-time flight dispatching program used to log incoming requests, find coordinates or landmarks such as hospitals, road intersections, airports, towns, etc., produce flight plans, and dispatch the aircraft. It is extensively menu and hotkey driven and is FAST – the aircraft can be dispatched as quickly as the information is gathered.

Dispatch Advantages

- Calculates navigation for entire flight plan; displays nearest aircraft to scene. Can use the Yeoman plotter as a waypoint input device. Database of all US Towns, Airports, and NavAids is included.
- Pop-up Windows display navigation information, radio frequencies, LZ descriptions, etc.
- Up to 995 vehicles tracked simultaneously; unlimited pending request queue.
- Real-time flight tracking. Hotkeys show nearest trauma center, airport, etc. Graphical flight path display. Yeoman plotter can display position fixes.
- Automatically activates alphanumeric pagers.” (Aeromed, page 4, italics and bold in original, underlining added)

The section of the cited portion relevant to Claim 2 as a whole is only 14 lines long, and is merely a list of features. Applicant submits that a substantial part of those 14 lines discusses producing flight plans and tracking flights, information relevant only to the second and third modules of Claim 2. Of the remaining portion, very little is relevant to instructions for dispatching an aircraft, the first module of Claim 1. Furthermore, everything under the “Dispatch Advantages” heading represents a result of the program, as evidenced by the heading. Applicant submits that there is nothing in the cited portion of the Aeromed reference that discloses how to dispatch an aircraft.

In contrast, the above-referenced patent application contains a significant amount of disclosure relevant to embodiments of both the system of Claim 2 generally, and the first module of Claim 2. Figure 4 contains a flowchart describing the dispatch module (an embodiment which comprises instructions for each of the three modules of Claim 2) in detail. Figure 3 contains a flowchart that shows inputs of each of the submodules within the dispatch module as well as the flow of information out of the dispatch module. Figure 2 contains a flowchart that shows the flow of information through the system as a whole, including the dispatch module. The dispatch module is discussed generally on at least pages 7, 8-10, 15-16, and 17-20. The portions of the

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dispatch module relevant to enablement of the first module of Claim 2 are discussed on at least pages 7, 8-10, 15-16, and 17-18. In particular, the discussion on pages 15-16, 17-18 contains detailed descriptions of the relevant portion of Figures 3 and 4, respectively.

The cited portion of the allegedly enabling prior art reference contains a handful of lines describing the results of the software. While the Aeromed reference vaguely mentions what the software can do, it does not disclose information helpful to the skilled artisan seeking to design such a computerized system. In contrast, the specification of the above-referenced application contains information enabling a person of ordinary skill in the art to develop the first module of Claim 2, including three relevant figures and a description spread out over several pages. Applicant submits that the information provided in the patent specification, particularly the flowcharts and detailed descriptions thereof, is information of the type that would be required, even by a skilled artisan, to develop the claimed computerized system without undue experimentation. Thus, the present application contains the detailed disclosure lacking in the prior art document.

Since Aeromed does not disclose or suggest a computerized system comprising instructions for determining whether the actual flight path differs from the calculated flight path, nor does it enable a person of ordinary skill in the art to develop, without undue experimentation, a computerized system comprising instructions for dispatching an aircraft, it does not anticipate the pending claims. For this reason, Applicant respectfully requests the reconsideration and withdrawal of the rejection of Claim 2.

As Claim 9 depends from Claim 2, Applicant respectfully requests the reconsideration and withdrawal of the rejection of Claim 9, for all of the reasons discussed with respect to Claim 2, and its other features.

Discussion of Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 2-5, 10, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Nathanson et al., U.S. Pat. No. 5,122,959 ("Nathanson"), in view of Scott Schriewer, *Airborne Ambulance Save Precious Time*, TULSA WORLD, May 22, 1996, pp. 1-2 ("Schriewer"). In addition, Claims 6-7, 11-12, and 16-17 were rejected under 35 U.S.C. § 103(a)

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as being unpatentable over Nathanson and Schriewer, and further in view of Terese Hudson, *Attorneys Fear Patient Transfer Claims in Malpractice Cases*, HOSPITALS, April 5, 1991, volume 65, issue 7, pp. 44-48 ("Hudson"). Claims 8, 13, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nathanson and Schriewer, and further in view of Matsumoto et al., U.S. Pat. No. 5,974,355 ("Matsumoto"). Lastly, Claims 9, 14 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nathanson and Schriewer, and further in view of Yee et al., U.S. Pat. No. 6,044,323 ("Yee").

Applicant respectfully submits that the rejection over Nathanson in view of Schriewer with respect to amended Claim 2 should be withdrawn.

The Examiner has stated that Nathanson teaches a computerized system for managing transportation of a patient, comprising instructions for tracking the actual path of the vehicle and determining whether the actual path varies from the calculated path. Applicant submits that the cited portion of Nathanson discusses a checklist used to confirm four events: arriving at the pickup location, leaving the pickup location, arriving at the destination location, and departing from the destination location. Nathanson says nothing about comparing the actual path taken by the vehicle while travelling from the pickup site to the destination with a calculated path. As Nathanson does not disclose instructions for determining whether the actual flight path varies from the calculated flight path, and this element is not found in Schriewer, Applicant respectfully submits that Claim 2 is not obvious over Nathanson in view of Schriewer. For this reason, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

As the Action stated that Claim 10 repeats the features of Claim 2, and was rejected for the same reasons, Applicant respectfully submits that the Office reconsider and withdraw the rejection of Claim 10 for the same reasons discussed above.

The Action further stated that Claim 15 repeats the subject matter of system Claim 1 in a series of steps, rather than a set of apparatus elements, and that the underlying structure of Claim 1 was shown to be fully disclosed by Nathanson and Schriewer. Applicant assumes that the Examiner was referring to the above discussed rejection of Claim 2. As the Action stated that Claim 15 was rejected for the same reasons as given above, Applicant respectfully requests that the Office reconsider and withdraw the rejection of Claim 15 for the same reasons discussed above.

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As Claims 3-9, 11-14, and 16-19 depend from Claims 2, 10, and 15, respectively, Applicant respectfully requests the reconsideration and withdrawal of the rejections of those claims for having the same reasons and their additional features.

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CONCLUSION

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, an amendment to the claims and arguments in support of the patentability of the pending claim set are presented above. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 8/6/03

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